



PUBLIC HEALTH

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HEALTHIER WASHINGTON**

Septic O&M on Marine Shorelines
WA State Board of Health, July 14, 2004

Agenda

- What is being asked of the Board
- What is already in RDC Report
- What are the policy drivers
- What is being proposed by DOH
- Policy issues re: environment and mandating renewable O&M permits
- Possible legislative package

Goals

- Familiarity with complex issues
- Exposure to different opinions
- Opportunity to ask questions
- Encourage early participation
- Prepare for November hearing
- Provide guidance if Board chooses

Requests for a further consideration

- RDC minority reports
- Puget Sound Action Team
- Governor Gary Locke
- Congressman Norm Dicks
- State Rep. John Upthegrove
- Pacific Coast Shellfish Growers

What's being asked of the Board?

- Stronger planning requirements (deadline, state review, adoption)
- Address environmental issues (i.e., nitrogen in marine waters)
- Renewable and revocable permits for marine counties

What are the PH policy drivers?

- Microbial contamination through drinking water, shellfish and bathing
 - Fecal coliform concentration primary reason for closures and restrictions [EPA Voluntary Guidelines]
- Nitrogen is a human health concern only if it contaminates drinking water (not marine)

What are non-PH policy drivers?

- Environmental: Declining water quality (especially Hood Canal)
- Economic: Shellfish industry
 - 22 of 96 commercial shellfish growing areas “threatened” (12 in 1997)
 - WA is the leading producer of farmed oysters, clams and mussels

Brad Ack, Director
Puget Sound Action Team
Marine Water Quality Issues
Oxygen Depletion in Puget Sound

What is already in the RDC report?

- Planning requirements, minimum lot size, nitrogen standard, etc...

**Maryanne Guichard, Director
Environmental Health & Safety
Department of Health**

What is being proposed by DOH?

Maryanne Guichard

Addressing environmental issues

- Limits on Board authority
- Nuisances
- Concurrent and conflicting authorities

Board's environmental authority

- RCW 43.20.050(2)(b): "...to protect public health, the state board of health shall... [a]dopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of wastes, solid and liquid, including but not limited to sewage [and] adopt standards and procedures governing the ... operation of sewage...facilities"

Board environmental authority

- Basic authority to protect public health
- Specific authority for operation requirements
- For “health hazards and *nuisances*”
 - Nuisance is a condition or use of the property that interferes with the ability of others to enjoy their property or properties

Concurrent local authority

- Constitutional and statutory PH authority for local government
- Specific LHJ statutory authority consider the environment as well as public health for alternative systems

1971 Shoreline Management Act

- Limit “adverse effects to the public health... the waters of the state and their aquatic life.”
- Primarily responsibility of local government
- Specifies DOE as lead state agency
- Broad rule making authority for DOE
- Local septic authority explicit in DOE WACs
- Later and more specific than 43.20.050

Operation and Maintenance Permits

- Limited operating permits issued to owner
- Must be renewed
- Can only be renewed if owner provides proof system is in compliance with the terms and the conditions of the permit.

Terms and conditions of permits

- Regular and timely O&M performed
 - Inspection by LHJ, or
 - Inspection by licensed contractor, or
 - Contract with inspection service or utility district

Concerns and impediments

- Legal issues
- Resource issues
- Political issues
- Enforcement/Accountability issues

Concerns and impediments

- Does requiring access diminish property?
 - Denying access is a right of ownership
 - Is it a taking?
- No administrative warrants unless HO can show probable cause (RCW 70.118.030)
- Court decision that owners don't have to cooperate with inspections & inventories
- Challenges to maintenance easements

Concerns and impediments

- Environmental health programs are funded by fees
 - No infrastructure dollars (databases, etc.)
 - Fees don't often reflect the true costs
- OSS inventories are incomplete, unreliable
- Need money for repairs (revolving fund)
- Capacity of local env. health departments

Concerns and impediments

- Availability of trained, licensed O&M contractors
- Desire to honor the RDC process
- Strong property rights focus in parts of WA
- Respect for local authority
- Mandate could cause backlash

Concerns and impediments

- Accountability—what are penalties?
 - Civil fines?
 - Use restrictions?
 - Attachment to property records?
 - Removal from property?
 - Condemnation?
- Rule making before legislative action

Thurston County Experience

- Countywide O&M permits
- Risk-based management in Henderson Inlet

**Art Starry, Environmental Health
Director**

Thurston County Health Department

Legislative/Interagency Fixes

- POG directive
- Legislative reforms being considered

Brad Ack

Options for the Board (partial list)

- Act on PSAT suggestion (assume risk)
- Narrow O&M requirement to focus on human health and high-risk areas
- Make it more difficult to permit on shorelines w/o waivers and require O&M as mitigation for the waiver
- Accept DOH changes as most we can do and await legislative “fixes”
 - Strong Board support for legislation

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